

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

EARL INGELS,	:	NO. 1:00-CV-01003
	:	
Petitioner,	:	
	:	ORDER
v.	:	
	:	
	:	
WANZA JACKSON,	:	
	:	
Respondent.	:	

This matter is before the Court on the Magistrate Judge's Report and Recommendation (doc. 19), to which Petitioner filed no objections.

Petitioner Earl Ingels, an inmate in state custody at the Warren Correctional Institution in Lebanon, Ohio, brings this action, with the assistance of counsel, for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 (doc. 16). On July 20, 1998, the Hamilton County Court of Common Pleas convicted Petitioner of four counts of kidnapping, two counts of gross sexual imposition, one count of abduction, and one count of attempted abduction (Id.). The court sentenced Petitioner to forty-four years, six months of incarceration, which Petitioner now challenges based on theories of denial of effective assistance of appeals counsel, denial of effective assistance of trial counsel, failure of the trial court to have all sidebar conferences placed on the record, and unconstitutional search and seizure (Id.).

In a Report and Recommendation dated April 26, 2004, the Magistrate Judge, after a thorough review of the evidence, recommended the Court deny, with prejudice, Petitioner's amended petition for writ of habeas corpus (doc. 19). The Magistrate Judge further recommended that a certificate of appealability should not be issued with respect to the standard set forth in Slack v. McDaniel, 529 U.S. 473, 484-85 (2000), and that Petitioner should be denied leave to proceed on appeal in forma pauperis, because an appeal of such an Order denying his petition would not be taken in good faith (Id.).

Proper notice was provided to the Parties under Title 28 U.S.C. § 636(b)(1)(C), including the notice that they would waive further appeal if they failed to file an objection to the Magistrate Judge's Report and Recommendation in a timely manner. See United States v. Walters, 638 F.2d 947, 949-50 (6th Cir. 1981). Petitioner did not file an objection to this Report and Recommendation.

Having reviewed this matter de novo, pursuant to Title 28 U.S.C. § 636, the Court concludes that the Magistrate Judge's Report and Recommendation is correct. Accordingly, the Court hereby ADOPTS the Magistrate Judge's report (doc. 19), AFFIRMS the Magistrate Judge's recommended decision (Id.), and DENIES Petitioner's amended habeas corpus petition with prejudice (doc. 16). The Court further FINDS that a certificate of appealability

should not issue with respect to the dismissal on procedural default grounds of Petitioner's claims because "jurists of reason would not find it debatable whether this Court is correct in its procedural ruling" as required under the first prong of the two-part standard enunciated in Slack v. McDaniel, 529 U.S. 473, 484-85 (2000), which is applicable to procedurally-barred claims. Petitioner has not shown that reasonable jurists could debate whether these claims should have been resolved in a different manner or that the issues presented were "adequate to deserve encouragement to proceed further." With respect to any application by Petitioner for in forma pauperis status for the purposes of pursuing an appeal of this Order, the Court certifies that pursuant to 28 U.S.C. § 1915(a), an appeal of this Order would not be taken in "good faith," and therefore, DENIES Petitioner leave to proceed on appeal in forma pauperis. Fed. R. App. P. 24(a); Kincade v. Sparkman, 117 F.3d 949, 952 (6th Cir. 1997).

SO ORDERED.

Date: June 23, 2004

s/S. Arthur Spiegel
S. Arthur Spiegel
United States Senior District Judge